

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 8:200. Microbiological monitoring.

6 RELATES TO: KRS 224.10-110 [~~224.10-110~~], 40 C.F.R. 141.21, 141.52, 141.63, EO
7 2009-538 [~~2008-507, 2008-531~~]

8 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.21, 42
9 U.S.C. 300f-300j-26, EO 2009-538

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) directs the cabinet to
11 enforce administrative regulations promulgated by the secretary for the regulation and control of
12 the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009,
13 establishes [~~2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and~~
14 ~~Public Protection and establish~~] the new Energy and Environment Cabinet. This administrative
15 regulation establishes a schedule and method for sampling drinking water to test for
16 bacteriological contaminants and establishes maximum contaminant levels for bacteria. This
17 administrative regulation also specifies requirements if tests show maximum contaminant levels
18 have been exceeded. This administrative regulation is more stringent than the corresponding
19 federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be
20 taken each month.

1 Section 1. A public water system shall meet the requirements established in 40 C.F.R.
2 141.21, 141.52, and 141.63[~~effective July 1, 2007~~], except that a public water system shall take
3 a minimum of two (2) coliform bacteria samples each month the system is in operation.

4 Section 2. A semipublic water system shall take a minimum of two (2) total coliform
5 bacteria samples each month the system is in operation.

6 Section 3. Population served shall be determined by the appropriate method established in
7 this section.

8 (1) A supplier of water serving an area defined by an official census count or population
9 projection shall use the most recent census count or official population projection.

10 (2) If a supplier of water serves an area without available official figures for population of the
11 area served, the population served shall be considered to be the greater of:

12 (a) A factor of not less than 2.97 times the number of residential meters; or

13 (b) A factor of not less than 2.47 times the total number of residential, commercial, and
14 industrial service connections.

401 KAR 8:200, “Microbiological monitoring” approved for promulgation:

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2010 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 19, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator
Division of Water
200 Fair Oaks Lane
Frankfort, KY 40601
Telephone: (502) 564-3410 Fax (502) 564-0111
Email: Abigail.Powell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:200

Contact Person: Peter Goodman, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation establishes monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.
- (b) The necessity of this administrative regulation:** This administrative regulation requires monitoring to assure microbiological purity of drinking water.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the Cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** The assurance of microbiological purity of drinking water is essential to protect public health.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This administrative regulation updates the federal citations. The substantive requirements of the existing regulations are unchanged.
- (b) The necessity of the amendment to this administrative regulation:** The amendment will allow future changes in federal regulatory requirements to be more easily adopted.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The updated citations will make the administrative regulation conform exactly to federal requirements.
- (d) How the amendment will assist in the effective administration of the statutes:** This amendment will allow future changes in federal regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to 479 public and 52 semipublic water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** This administrative regulation updates the federal citations. The substantive requirements of the existing regulations are unchanged.

- (b) **In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** The costs of complying with this administrative regulation are unchanged.
- (c) **As a result of compliance, what benefits will accrue to the entities identified in question (3):** Public water systems will benefit by clearly seeing where the requirements of this administrative regulation are more stringent than the federal requirements.
- (5) **Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**
- (a) **Initially:** The requirements of this administrative regulation are unchanged from regulations currently in place. Costs of implementation will remain the same.
- (b) **On a continuing basis:** The requirements of this administrative regulation are unchanged from the regulation currently in place. Costs of implementation will remain the same.
- (6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?** The source of funding for the drinking water program is a federal funds provided to administer the requirements of the Safe Drinking Water Act.
- (7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** An increase in fees will not be necessary.
- (8) **State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This administrative regulation does not establish fees or directly or indirectly increase fees.
- (9) **TIERING: Is tiering applied? (Explain why or why not)**
Yes. The requirements for compliance with this administrative regulation differ based on the number of persons served by the public water system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 8:200

Contact Person: Peter Goodmann, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation applies to public and semipublic water systems. Units of state or local government that own a public water system, and individuals who own a semi-public water system, will be impacted by this regulation.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), requires the establishment of national primary drinking water regulations. 40 CFR 141.21, 141.52, and 141.63 establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation simply update the federal citations; they will not impose any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation simply update the federal citations; they will not impose any additional cost in subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:200

Contact Person: Peter Goodman, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), 40 C.F.R. 141.21, 141.52, and 141.63

2. State compliance standards.

KRS 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26) requires the establishment of national primary drinking water regulations. 40 CFR 141.21, 141.52, and 141.63 establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

The amendment to this regulation does not impose stricter or additional requirements from the federal regulations. However, the existing regulation does contain a requirement that is different from the federal regulation, and that requirement is not changing. A minimum number of two microbiological tests per month are required of both public and semipublic water systems. Federal regulations do not cover semipublic systems, and require as few as one per quarter in small public systems. Two samples per month is a long standing requirement in Kentucky and is a standard more protective of public health.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

KRS 24.10-110 requires the cabinet to regulate semipublic as well as public water systems. The cabinet has required a minimum of two bacteriological samples per month in both semipublic and public water systems since before the passage of the federal Safe Drinking Water Act, and believes this requirement is both reasonable and more protective of public health than a single sample per quarter, as is allowed for some small systems in the federal requirement.